

# **RULES OF PROCEDURE**

## **Board of Adjustment Salisbury, North Carolina**

### **I. GENERAL RULES**

- A. The Board of Adjustment shall be governed by the terms of Article 3 of Chapter 160D of the General Statutes of North Carolina and Section 16.01 through Section 16.07, Article XVI, Appendix Title II, of the Code of the City of Salisbury. All members of the Board shall thoroughly familiarize themselves with these laws.

### **II. OFFICERS AND DUTIES**

- A. Chairman. The Chairman shall be elected by majority vote of the Board of Adjustment from among its regular members. His term of office shall be for one year, and until his successor is elected, beginning in January, and the Chairman shall be eligible for re-election. Subject to these rules, the Chairman shall decide upon all points of order and procedure, unless directed otherwise by a majority of the Board in session at the time. The Chairman shall appoint any committees found necessary to investigate any matter before the Board.
- B. Vice Chairman. A Vice Chairman shall be elected by the Board from among its members in the same manner and for the same term as the Chairman. He or she shall serve as acting Chairman in the absence of the Chairman, and at such times shall have the same powers and duties as the Chairman.
- C. Secretary. The Secretary position is not a Board established position, but rather shall be filled by Community Planning Services staff. The Secretary, subject to the direction of the Chairman, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all public notices required to be given, and shall generally supervise the clerical work of the Board. The Secretary shall keep in a permanent volume, the minutes of every meeting of the Board. These shall be and show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of members of the Board upon any resolution or upon the final determination of any question, indicating the names of members absent or failing to vote. If the Secretary is chosen from outside the membership of the Board, he (she) shall not be eligible to vote upon any matter. The Secretary shall send copies of minutes of the previous meeting along with the agenda for upcoming meeting to Board members.

### **III. MEMBERS**

- A. Membership on the Board of Adjustment shall be governed by the terms of Article 3 of Chapter 160D of the General Statutes of North Carolina and by Section 16.01

and 12. 01-1, Article XVI, Appendix, Title II, of the Code of the City of Salisbury, North Carolina.

- B. Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite of continuing membership on the Board. Any member of the Board who misses three meetings out of any six consecutive meetings will be notified by letter noting his (her) attendance record and asking if he (she) wishes to continue to serve. If the member again misses three meetings out of any six consecutive meetings, he (she) will be asked to resign.
- C. No Board member shall vote on any matter regarding an application or appeal unless he (she) shall have attended the public hearing on that application or appeal.
- D. Members of the Board will not express individual opinions on the proper judgment of any case with any parties thereto prior to the determination of that case.
- E. Alternate members of the Board shall receive notices of all Board meetings and shall be urged to attend so as to keep abreast of hearings and actions. Regular members, on receiving notice of a meeting which they cannot attend or upon learning that they will be unable to participate in a meeting, shall promptly give notice to the Secretary of the Board that they are unable to attend or to participate. On receiving such notice, the Secretary shall, by the most expeditious means, notify an alternate member to attend.

Assignments of alternate members shall be made by the Chairman from those representing the jurisdiction represented by the absent regular member. At any meeting which they are called upon to attend, alternate members shall have the same powers and duties as regular members. Three alternate members shall be residents of the City of Salisbury and will be appointed by the City Council; two alternate members representing the Salisbury extraterritorial jurisdiction shall be residents of the City of Salisbury extraterritorial jurisdictional area and will be appointed by the Rowan County Commissioners at the request of the Salisbury City Council.

#### IV. CONFLICTS OF INTEREST

- A. Any member of any board exercising quasi-judicial functions pursuant to North Carolina General Statutes 160D-109 shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. A "close familial relationship" is defined as a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

## V. MEETINGS

- A. Meetings. Called meetings of the Board of Adjustment shall be held on the fourth Tuesday of each month at 4 p.m., on an as-needed basis, in the Council Chambers of City Hall; provided, however, that meetings may be held at some other convenient place in the City if directed by the Chairman in advance of the meeting.
- B. Special Meetings. Special meetings of the Board may be called at any time by the Chairman. At least twenty-four (24) hours written notice of the time, agenda, and place of special meeting shall be given, by the Secretary or the Chairman, to each member of the Board.
- C. Cancellation of Meetings. In the event regular or alternate members notify the Secretary of inability to attend a scheduled meeting resulting in a quorum not being met, the Chairman may cancel the scheduled meeting by giving written or oral notice to all members not less than five (5) hours prior to the time set for the meeting.
- D. Quorum. A quorum shall consist of five (5) members of the Board, and the Board shall not pass upon any questions relating to an appeal from a decision, order, requirement, or determination of the Building Inspector or an application for a variance or an exception when there are less than five (5) members present.
- E. Conduct of Meetings. All meetings shall be open to the public, subject to these rules. The order of business at regular meetings shall be as follows: (a) hearing of cases; (b) reports of committees; (c) unfinished business; (d) new business; (e) consideration and determinations of cases heard previously; (f) approve minutes of previous meetings.

## VI. APPEALS AND APPLICATIONS

- A. Types of Appeals. The Board of Adjustment shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator. It shall also hear and decide all matters referred to it or upon which it is required to pass by the Zoning Ordinance of the City of Salisbury, North Carolina. In deciding appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of the ordinance and those based upon alleged hardship resulting from strict interpretation of the ordinance. The appeals shall be of one or more of the following types:
  - 1. Administrative Review. This function involves hearing and deciding appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of the ordinance, including interpretation of zoning maps and disputed questions of lot lines or district boundary lines, and similar questions as they arise in the administration of the zoning ordinance. Interpretation of the zoning ordinance in this manner is the function of the Board of Adjustment which is most closely similar to that of the courts. This function involves interpreting the meaning of parts of

the ordinance which are unclear, applying the ordinance to particular fact situations, and, if necessary, correcting any mistakes or abuses of discretion which the Zoning Administrator may have made in administering the ordinance. In so interpreting the ordinance, the Board of Adjustment must not vary the ordinance.

2. Determination of Variances. This function involves hearing and deciding upon appeal in specific cases such variances from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will, in an individual case, result in practical difficulty or unnecessary hardship. In so doing, the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

B. Hearings.

1. Time. Hearings shall be called on an as-needed basis at 4 p.m. typically on the fourth Tuesday of each month with each meeting being held within thirty-six (36) days from the filing of an appeal or application with the Secretary, or at a special meeting.
2. Notice. The Secretary of the Board shall give public notice of the hearing by mailing notices of the hearing to the parties to the action at least ten (10) days prior to the hearing and also following the notice of public hearing procedures for quasi-judicial hearings as outlined in Chapter 15 of the Salisbury Land Development Ordinance.
3. Conduct of Hearing. Any party may appear in person or by agent or by attorney at the hearing. The order of business for each hearing shall be as follows: (a) The Chairman, or such person as he shall direct, shall give a preliminary statement of the case. The Chairman shall swear in the witnesses; (b) the applicant shall present the arguments in support of his case or application; (c) persons opposed to granting the application shall present the arguments against the application; (d) both sides will be permitted to present rebuttals to opposing testimony. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a court of law. The Board may, in its discretion, view the premises and obtain additional facts in the matter before arriving at a determination of the case.
4. Rehearing. An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. A rehearing shall be denied by the Board if in its judgment there has been no substantial change in the facts, evidence, or conditions in the case. If the Board finds that there has been such a change, it shall thereupon treat the request in the same manner as any other application. An application for a second

rehearing cannot be heard within six (6) months from the decision of the first hearing.

C. Decisions.

1. Time. Decisions by the Board of Adjustment shall be made not more than thirty-six (36) days from the time of the hearing. On all appeals, applications and other matters brought before the Zoning Board of Adjustment said board shall inform, in writing, all of the parties involved of its decisions and the reasons therefor.
2. Form. Written notice of the decision in a case shall be given to the parties by the Secretary as soon as practicable after the case has been decided. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the Chairman and the Secretary upon approval of the minutes of the Board. The record shall show the reasons for the decision.
  - a. Variances. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the Board finds to exist. The decision may reverse or affirm, wholly or partly or modify the order, requirement, decision, or determination appealed from. The record shall state what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a variance or an exception.
3. Expiration of Permits. Unless otherwise specified, any order or decision of the Board granting a variance or a special use permit shall expire if a building permit or a certificate of occupancy for such is not obtained by the applicant within six (6) months from the date of the decision.
4. Voting at Hearings. All members of the Board of Adjustment shall have equal rights, privileges, and duties in all matters pertaining to the regulation of the extra-territorial jurisdiction area and the jurisdictional area within the corporate limits of the City of Salisbury. The concurring vote of four-fifths (4/5) of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official charged with enforcement of this ordinance or to decide in favor of the applicant on any matter upon which it is required to pass under the Zoning Ordinance or to effect any variation of the Zoning Ordinance.
5. Public Record of Decision. The decision of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

## VII. AMENDMENTS

- A. Amendments and changes in these rules of procedure may be made by majority vote at any meeting of the Board of Adjustment with a thirty (30) day notice sent to all Board members.

Read, approved, and adopted by the Board of Adjustment on the 10<sup>th</sup> day of November, 2020, the following Board members voting AYE:

John Schaffer, Chair

Bill Burgin

Jayne Land

Patricia Ricks

John Struzick

Bill Wagoner

These Rules of Procedure, as rewritten and amended, shall become effective this 10<sup>th</sup> day of November, 2020.

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Chairman

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Secretary